

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Joshua Aldridge,

Plaintiff,

Case No. 15-cv-12366

v.

Judith E. Levy

United States District Judge

City of Warren, Officer Colin

McCabe, and Kimberley Teolis,

Mag. Judge Elizabeth A. Stafford

Defendants.

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ORDER GRANTING DEFENDANTS' BILL OF COSTS [66]

Before the Court is defendants' bill of costs, filed under Fed. R. App. P. 39(e), arising from plaintiff Joshua Aldridge's appeal of the Court's orders granting defendants' motion for summary judgment and imposing sanctions on plaintiff's counsel, the firm of Christopher Trainor & Associates. (Dkt. 66.)

This case involved alleged violations of plaintiff's civil rights by defendants. (Dkt. 1.) On January 12, 2016, the Court granted defendants' motion for summary judgment and permitted defendants to file a motion for sanctions. (See Dkt. 30.) On March 21, 2016, the Court

granted the motion for sanctions, and issued a final order detailing the sanctions on May 22, 2016. (Dkt. 53.)

Plaintiff appealed the Court's orders granting defendants' motions for summary judgment and for sanctions. On March 30, 2017, the U.S. Court of Appeals for the Sixth Circuit issued an opinion affirming both orders. (Dkt. 65.)

Defendants have now filed a bill of costs pursuant to Fed. R. App. P. 39(e). (Dkt. 66.) Defendants seek costs totaling \$463.27 for three transcripts relevant to the appeal: \$106.27 for a transcript of the December 23, 2015 hearing on the request to stay discovery (Dkt. 54); \$136.00 for a transcript of the January 12, 2016 hearing on the motion for summary judgment (Dkt. 32); and \$221.00 for a transcript of the March 21, 2016 hearing on the motion for sanctions. (*Id.* at 1–2.)

Plaintiff objects to the bill of costs on two grounds: (1) the \$10,000 maximum sanction imposed by the Court included court transcripts for all fees and costs incurred after the safe-harbor letter, which was sent in early January 2016, and (2) defendants have not shown the December 23, 2015 hearing transcript was necessary to the appeal.

First, the \$10,000 maximum sanction was imposed under Fed. R. Civ. P. 11, and included “fees and costs.” (Dkt. 53.) Plaintiff’s counsel argues this sanction included the costs for transcripts of the January 12, 2016 and March 21, 2017 hearings. But costs under Rule 11 are imposed for reasons and conduct separate from the costs a party may recover under Fed. R. App. P. 39.

Rule 11 sanctions are imposed both for “conduct tied to a particular pleading” and “conduct related to the case as a whole,” including when counsel or a litigant “insist[s] on a position after it is no longer tenable.” *Runfolo & Assoc., Inc. v. Spectrum Reporting II, Inc.*, 88 F.3d 368, (6th Cir. 1998) (Cohn, J., concurring). And costs awarded under Fed. R. App. P. 39 are granted because a party was forced to defend on appeal. As Rule 39(a) states in relevant part, “if a judgment is affirmed, costs are taxed against the appellant.” Fed. R. App. 39(a)(2). Therefore, any costs awarded to defendants under the order imposing sanctions is exclusive of costs incurred as a result of the appeal. Accordingly, the order imposing sanctions did not include the costs for transcripts of the January 12, 2016 and March 21, 2017 hearings that defendants used on

appeal. Defendants are entitled to recover the \$136.00 and \$221.00 in transcript costs.

Defendants also seek \$106.27 in costs for the transcript of the December 23, 2015 hearing. Plaintiff's counsel contends defendants have made no showing that the transcript was necessary for the appeal. But plaintiff's counsel argued the Court erred by entering a stay of discovery during that conference, and counsels' conduct during and following that conference factored into the Court's decision to impose sanctions and was therefore part of plaintiff's appeal. (*See* Dkt. 53 at 7.) Thus, the transcript was necessary for purposes of determining whether the Court abused its discretion in imposing sanctions, and defendants are entitled to recover the costs of this transcript.

Accordingly, the Court GRANTS the bill of costs, which includes transcript fees for the December 23, 2015 hearing (\$106.27), January 12, 2016 hearing (\$136.00), and March 21, 2017 hearing (\$221.00), for a total of \$463.27.

IT IS SO ORDERED.

Dated: April 14, 2017
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on April 14, 2017.

s/Felicia M. Moses
FELICIA M. MOSES
Case Manager